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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

ONEBEACON INSURANCE COMPANY, Plaintiff and Appellant, v. PANKOW RESIDENTIAL BUILDERS II, LP, Defendant and Respondent.	A124986 (San Francisco City and County Super. Ct. No. CGC 06 454958)

An insurance company issued a liability policy to the owner of a building. While the building was being remodeled by a construction company, a passerby was injured due to the construction company's negligence. The insurance company paid the proceeds of the liability policy to the passerby, and then filed the action from which this appeal arose, seeking subrogation against the construction company.

The trial court found that the construction company was an additional insured under an endorsement to the building owner's policy. The court also declined to reform the policy in that regard on the basis of the insurance company's contention that the construction company was included on the endorsement by mistake. Accordingly, the court concluded that the insurance company was not entitled to subrogation against the construction company. We affirm.

FACTS AND PROCEDURAL BACKGROUND

A. Background Facts

In February 2001, respondent Pankow Residential Builders II (Pankow) was the general contractor in charge of a remodeling project (the Project) at a high-rise building in San Francisco that was owned by Third & Mission Associates, LLC (Third). As part of the construction contract between Pankow and Third, Pankow agreed to indemnify Third with regard to "all claims for bodily injury . . . that may arise from the performance of the [Project], to the extent of the negligence or fault attributed to . . . acts or omissions by [Pankow] . . . or anyone employed directly or indirectly by [Pankow] or by anyone for whose acts [Pankow] may be liable. . . ." In addition, the construction contract required Pankow to obtain liability insurance covering its work on the Project, and to name Third as an additional insured on the insurance policy. That requirement was not reciprocal; the contract did *not* require Third to name Pankow as an additional insured on any policies obtained by Third to cover liability related to the Project.

During the course of the work on the Project, on February 28, 2001, due to the negligence of a Pankow employee, a plywood panel dropped from the building's twenty-second floor, injuring three pedestrians on the sidewalk below (the Accident). The pedestrians sued both Pankow and Third. Neither Third nor Pankow contested liability. They settled with two of the pedestrians, and although they went to trial with the third (the Howard action), it was only on the issue of damages. The third pedestrian (Howard) obtained a judgment in the Howard action holding Third and Pankow jointly and severally liable for his damages.[1]

In the Howard action, Pankow's primary insurer, Gerling American Insurance Company (Gerling), and its excess carrier, Lumbermen's Mutual Casualty Company (LMC), provided defense and indemnity coverage not only to Pankow, but also to Third

[1] The trial court in the present litigation found that Pankow's negligence with regard to the Accident was active, and thus that Pankow was solely liable for the judgment in the Howard litigation. Pankow does not contest this finding on appeal.

as an additional insured. Neither of those insurers was a party to the litigation that led to the present appeal.

On July 1, 2005, appellant OneBeacon Insurance Company (OneBeacon) moved to intervene in the Howard action. After the motion was granted, the policy limits of an insurance policy issued by OneBeacon (the OneBeacon policy), plus interest, were disbursed to Howard.

B. The OneBeacon Policy

In addition to the indemnity agreement and insurance coverage that Third received from Pankow in connection with the Project, Third was also covered by policies issued to its parent company, The Related Companies, L.P. (Related). During the period from 1998 through 2001, Related purchased liability insurance for itself and Third from OneBeacon. The OneBeacon policy whose proceeds were paid out in the Howard action was one of these policies.[2]

The possibility that Pankow as well as Third might be covered under the OneBeacon policy appears to have first come to the attention of counsel involved in the Howard action in October 2004, about a month after the jury verdict was rendered in that action. At that time, Wendy Wilcox, LMC's coverage counsel, wrote to Michael Bolechowski, the attorney representing Pankow and Third in the Howard action. Wilcox asked Bolechowski whether Pankow had tendered the defense and indemnification in the Howard action to OneBeacon. In her letter, Wilcox told Bolechowski that certificates of insurance in her possession indicated that Pankow was named as an additional insured on the OneBeacon policy.

The facts relevant to Pankow's status under the OneBeacon policy, as stipulated by the parties or found by the trial court, are as follows. The conduit for Related's purchase of insurance from OneBeacon was an insurance broker, Distinguished Properties Insurance Brokerage Corporation (Distinguished). From 1999 to 2002, the

[2] OneBeacon actually issued three successive policies covering Third. For simplicity, we will refer to them collectively as the OneBeacon policy, because there is no issue on appeal that requires us to draw any distinction among them.

account executive at Distinguished who was responsible for Related's account was Michael Roopnarine.[3] When Roopnarine took over the account, the file contained a certificate of insurance dated September 10, 1999 (the 1999 Certificate), which had been signed by Harriet Dolgan, Roopnarine's predecessor as the person in charge of the Related account. The 1999 Certificate indicated that Pankow was an additional insured on the OneBeacon policy. Dolgan did not testify at trial[4]; Roopnarine did not discuss the 1999 Certificate with Dolgan; and no evidence was introduced at trial regarding the reason why the 1999 Certificate was issued. It is undisputed that the 1999 Certificate, by its own terms, did not in and of itself confer any rights on Pankow, and did not "amend, extend, or alter the coverage afforded by" the OneBeacon policy.

On April 3, 2000, in reliance on the presence of the 1999 Certificate in Related's file, Roopnarine prepared a binder (the Roopnarine binder) requesting OneBeacon to add Pankow, among others, as an additional insured on the OneBeacon policy. Jacqueline Young, an underwriter at OneBeacon, signed the Roopnarine binder in reliance on the assumption that the information she received from Distinguished was correct.

On June 7, 2000, in response to the Roopnarine binder, OneBeacon issued an endorsement to the OneBeacon policy, effective retroactively August 3, 1999. This endorsement (the 1881 Form), which was labeled a "general change endorsement," made three changes to the OneBeacon policy: (1) it added Third as a named insured; (2) it added the location of the Project as an insured location; and (3) it added Pankow, among

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[3] OneBeacon asks us to find, under Code of Civil Procedure section 909, that Roopnarine is not a native speaker of American English and has a thick accent, which resulted in "speech peculiarities in his deposition testimony." We decline to do so, as OneBeacon admittedly did not introduce evidence to that effect in the trial court. In any event, the issue is irrelevant. Our ability to adjudicate this appeal has not been affected by any "peculiarities" in the excerpts from Roopnarine's deposition transcripts that were introduced in evidence before the trial court.

[4] OneBeacon asks us to find, under Code of Civil Procedure section 909, that Dolgan was no longer employed by Distinguished at the time of trial. We decline to do so. It is not necessary, in order for us to adjudicate this case, for us to determine what inferences, if any, may legally be drawn from the fact that Dolgan did not testify.

others, as an additional insured with respect to the Project location. The 1881 form also stated that it was issued in consideration of an additional premium of $59,160, and was "subject to all the agreements, conditions, and exclusions of the [OneBeacon] policy."

Roopnarine testified that he never spoke to Related or OneBeacon about the scope of any additional insurance coverage to be provided under the OneBeacon policy. Thus, there is no extrinsic evidence regarding the parties' intent in connection with the issuance of the specific 1881 form involved in this case.

C. Proceedings in the Trial Court

On August 10, 2006, OneBeacon filed the civil action from which this appeal arose. The complaint included claims for subrogation and declaratory relief, and sought contractual and equitable indemnity against Pankow. The case was tried to the court in September 2008, primarily on stipulated facts, deposition excerpts, and exhibits, with live testimony from only two witnesses. During the trial, the trial court permitted OneBeacon to amend its complaint to seek reformation of the OneBeacon policy based on mistake.

On February 17, 2009, the trial judge filed a 25-page statement of decision, ruling in favor of Pankow. Judgment was entered on February 25, 2009, and this timely appeal ensued.

DISCUSSION

A. Was Pankow an Additional Insured Under the OneBeacon Policy?

If Pankow was an additional insured under the OneBeacon policy, then OneBeacon cannot recover from Pankow, via subrogation, the amount that OneBeacon paid Howard. (See, e.g., *State Farm General Ins. Co. v. Wells Fargo Bank, N.A.* (2006) 143 Cal.App.4th 1098, 1107-1108 [insurer cannot subrogate against insured for loss covered by policy].) Thus, the first issue presented by this appeal is whether or not Pankow was in fact an insured under the OneBeacon policy.

OneBeacon's brief approaches this question by arguing that the facts do not show that the parties to the OneBeacon policy *intended* Pankow to be a third party beneficiary of that policy. In contract interpretation, however, the language of the contract documents controls, and the parties' intentions do not become relevant unless the contract

is ambiguous or otherwise requires extrinsic evidence in order to be understood. (*Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 18; *AIU Ins. Co. v. Superior Court* (1990) 51 Cal.3d 807, 821-822.) Thus, in determining whether the 1881 form added Pankow as an insured, we must start with the language of the relevant documents, i.e., the documents comprising the OneBeacon policy, including the 1881 form. Because there is no dispute as to the authenticity or terms of those documents, and because neither party argues that parol evidence is required in order to understand them, the interpretation of the OneBeacon policy is a pure question of law, which we review de novo. (*Powerine Oil Co., Inc. v. Superior Court* (2005) 37 Cal.4th 377, 390.)

OneBeacon does not argue that the language of the 1881 form is unclear or ambiguous. It cites evidence that industry practice requires the use of a different form to extend coverage to an additional insured, but does not cite any statutory or case authority for that proposition,[5] or any evidence that Related, Third, or Pankow were informed of OneBeacon's position on this question when the 1881 form was issued. If contract language is clear, the unexpressed intentions and understandings of one of the contracting parties cannot be relied upon to alter the substantive terms of the contract. (*AIU Ins. Co. v. Superior Court*, *supra*, 51 Cal.3d at pp. 821-822; *Waller v. Truck Ins. Exchange, Inc.*, *supra*, 11 Cal.4th at p. 18.) " 'A party is bound, even if he misunderstood the terms of a contract and actually had a different, undisclosed intention.' [Citation.]" (*Atlas Assurance Co. v. McCombs Corp.* (1983) 146 Cal.App.3d 135, 144; see also *Mercury Ins. Co. v. Pearson* (2008) 169 Cal.App.4th 1064, 1073-1074 [man who purchased insurance policy for himself and his fiancée was not, as a matter of law, entitled to reformation of policy based on assertion that he expected to receive same coverage as fiancée, where policy included clear, unambiguous terms excluding man from certain coverage].) Thus, we concur with the trial court's rejection of OneBeacon's contention that the 1881 form

[5] Indeed, OneBeacon's argument is undercut, if not belied, by the existence of at least two other unrelated 1881 forms adding additional insureds to the OneBeacon policy.

did not do exactly what it said, i.e., add Pankow as an additional insured with respect to the location of the Project.

Despite the language of the 1881 form, OneBeacon argues that Pankow should not be treated as an additional insured because there is no evidence that OneBeacon and Related *intended* Pankow to be a third party beneficiary of their contract, i.e., the OneBeacon policy. In support of this contention, in its opening brief, OneBeacon cites *Souza v. Westlands Water Dist.* (2006) 135 Cal.App.4th 879 (*Souza*) for the proposition that whether a particular third person is an intended third party beneficiary of a contract is a question of intent.

In *Souza*, *supra*, 135 Cal.App.4th 879, a provision in a water district's regulations required the district to obtain either prepayment or security before resuming water service to a water user that became delinquent on its bill. The regulation was incorporated by reference into the Souzas' water agreement with the district. Despite this regulation, the district continued to provide water to the Souzas' tenants, who were obligated by the terms of their lease to pay the water bill, even though the tenants neither paid the bill nor provided security for its payment. The district then assessed the Souzas for the tenants' unpaid water bill. The Souzas challenged the assessment on the ground that they were third party beneficiaries of the district's regulation requiring prepayment or security by delinquent water users. It was in that context that the Court of Appeal stated that the status of the Souzas as third party beneficiaries of the district's regulation was a question of fact depending on the intent of the parties. (*Id.* at pp. 891-892.)

Significantly, in a portion of the *Souza* opinion not quoted in OneBeacon's brief, the court noted that " ' "[i]f the terms of the contract *necessarily* require the promisor to confer a benefit on a third person, then the contract, and hence the parties thereto, contemplate a benefit to the third person. The parties are presumed to intend the consequences of a performance of the contract." [Citation.]' [Citation.]" (*Souza, supra*, 135 Cal.App.4th at p. 891, italics added.) Thus, *Souza* does not stand for the proposition that when, as here, a contract expressly names a third party beneficiary, the issue of that third party's status remains a question of intent to be determined on the basis of extrinsic

evidence. (See *Prouty v. Gores Technology Group* (2004) 121 Cal.App.4th 1225 [where agreement between buyer and seller of company expressly provided that buyer would either retain seller's employees or pay them specified severance benefits, employees were third party beneficiaries of contract as matter of law, despite provision elsewhere in contract that it was not intended to benefit any third parties].)

In its reply brief, OneBeacon cites *Hess v. Ford Motor Company* (2002) 27 Cal.4th 516 (*Hess*) for the proposition that, as OneBeacon puts it, "an unambiguous contract may be reformed to show the true intention of the parties as against an alleged third party beneficiary." *Hess* involved a broadly worded general release provision in a personal injury settlement agreement, which was invoked as a defense in a subsequent suit by the injured party against a different, nonsettling defendant. The nonsettling defendant was not expressly named in the release, and the injured party produced evidence that *both* parties to the settlement, during the settlement negotiations, affirmatively expressed the intention that the injured party would retain the right to sue the nonsettling defendant. Thus, in holding that the nonsettling defendant could not invoke the release, *Hess* relied on the express statements of both contracting parties that the nonsettling defendant, which was *not* named in the settlement agreement, was not an intended third party beneficiary of the release. In the present case, however, Pankow was expressly named as an additional insured in the 1881 form. Moreover, OneBeacon has cited no evidence that the *other* party to the insurance contract, i.e., Related, or its subsidiary, Third, ever *expressed* an intention that despite the language of the 1881 form, they did not intend Pankow to benefit from the OneBeacon policy.

OneBeacon's reply brief also cites *Carolina Casualty Ins. Co. v. Ortiz* (E.D.Cal. 2010) __ F.Supp.2d __ [2010 WL 55880] (*Carolina Casualty*) for the proposition that the issuance of the 1999 certificate alone does not establish that OneBeacon or Third intended to extend the coverage of the OneBeacon policy to Pankow. But, as OneBeacon acknowledges, in *Carolina Casualty*, the purported additional insured was named only in a certificate of insurance, and not, as here, in an actual endorsement to the policy. While the policy involved in *Carolina Casualty* had a general additional insured endorsement

under which the purported additional insured claimed coverage, that endorsement, by its terms, contained criteria for additional insured status which the purported additional insured did not satisfy. (See *id.* at pp. __ [2010 WL 55880 at pp. *9, *11-12].) Thus, the holding of *Carolina Casualty* does not apply here, where an additional insured endorsement not only exists, but also expressly names Pankow as an additional insured.

In short, OneBeacon has not cited any authority for the proposition that a contract provision expressly and unambiguously identifying a specific third party beneficiary can be vitiated by the *unexpressed* contrary intention of *one* party to the contract. This is not surprising, because such a holding would violate the general principles of contract interpretation discussed earlier. Accordingly, OneBeacon has not convinced us that the 1881 form should not be enforced according to its terms.[6]

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[6] Even when a court is required to resort to evidence of intent in order to determine whether someone is an intended third party beneficiary of a contract, the intent that matters is the intent of the *promisee* under the contract, not the intent of the promisor. (See, e.g., *Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1023-1024, 1027-1029 [where employer rented apartment, and also agreed to furnish housing to particular employee, employee could establish status as third party beneficiary of lease if employee could prove that *employer*, and not the promisor landlord, intended lease to benefit employee]; see also 1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, §§ 687-688, pp. 773-776.) Here, Related and Third, as the insureds, were the promisees under the OneBeacon policy. As already noted, OneBeacon has not pointed to any evidence in the record establishing that Related and/or Third had no intent to add Pankow as an additional insured on the OneBeacon policy.

OneBeacon stresses that the construction contract between Third and Pankow did not *require* Third to provide Pankow with insurance against construction accidents, but that contract also did not preclude Third or Related from doing so. (See *American Casualty Co. v. General Star Indemnity Co.* (2005) 125 Cal.App.4th 1510, 1525, 1527 [additional insured endorsement creates separate contractual obligation from indemnity provision in related construction contract, and absent contrary language in policy or endorsement itself, additional insured can enforce right to coverage under policy even if accident resulted from additional insured's own negligence, and policy owner did not have contractual obligation to indemnify additional insured].) Thus, even if we were to look past the contractual language and examine the parties' intent with regard to Pankow's status as a third party beneficiary of the OneBeacon policy, we still would not be persuaded by OneBeacon's factual showing.

B. Was Pankow Covered for the Liability to Howard?

OneBeacon also argues that even if Pankow was added to the OneBeacon policy by the 1881 form, the coverage extended to Pankow did not include liability coverage for construction accidents caused by Pankow's negligence, such as the Accident. OneBeacon does not argue that the 1881 form itself excluded coverage for the Accident; rather, it bases its argument on a different endorsement to the OneBeacon policy, referred to as the 2026 form. OneBeacon argues that the 2026 form precludes coverage for Pankow because it states that additional insureds added by virtue of the 2026 form are covered "only with respect to liability arising out of [Related's] operations or premises owned by or rented to you." The trial judge concluded that because Pankow was an additional insured by virtue of the 1881 form only, and not by virtue of the 2026 form, the limitations on coverage included in the latter therefore did not apply to Pankow.

OneBeacon argues that this was error, reasoning that a contract must be interpreted in its entirety. We do not disagree with this general proposition, but upon de novo review, we agree with the trial court's reading of the contract. The language of the 2026 form makes clear that the limitations on coverage set forth in the 2026 form apply only to additional insureds added by virtue of the schedule of persons and organizations listed on the 2026 form itself. In the present case, that schedule consisted of one entry, reading in its entirety "as required under contract" (original capitalization omitted). Both OneBeacon and Pankow agree that the construction contract between Third and Pankow did *not* require Third to extend insurance coverage to Pankow. Thus, Pankow was not added as an additional insured by the 2026 form, and that form's limitations simply do not apply to Pankow.[7]

C. Should the OneBeacon Policy Be Reformed Based on Mistake?

As an alternative, OneBeacon argues that if Pankow was an additional insured on the OneBeacon policy with respect to the liability to Howard, this was a mistake, and the

[7] In light of this conclusion, we need not address OneBeacon's argument that if the limitations of the 2026 form apply to Pankow, then Pankow was not insured under the OneBeacon policy for the type of risk that gave rise to the Howard litigation.

policy should therefore be reformed. At trial, a party seeking reformation of a contract on the basis of mistake has the burden of proving mistake by clear and convincing evidence. (*Perry v. Bedford* (1965) 238 Cal.App.2d 6, 11; see also *Tomaselli v. Transamerica Ins. Co.* (1994) 25 Cal.App.4th 1269, 1287-1288 [clear and convincing evidence standard requires that evidence be so clear as to leave no substantial doubt, and sufficiently strong to command unhesitating assent of every reasonable mind].) On review, however, we apply a different standard; our task is to determine whether there is substantial evidence to support the trial court's finding that OneBeacon failed to establish mistake by clear and convincing evidence. (*In re Marriage of Rossi* (2001) 90 Cal.App.4th 34, 40; *Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.* (2000) 78 Cal.App.4th 847, 891.)

As Pankow's brief on appeal correctly points out, OneBeacon has arguably waived its substantial evidence argument by failing to "set forth, discuss, and analyze all the evidence on [the disputed] point, both favorable and unfavorable. [Citation.]" (*Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218.) In any event, the trial court's findings regarding mistake are supported by substantial evidence.

The trial court found that "[f]or some unknown reason, . . . Dolgan . . . prepared a certificate of insurance [i.e., the 1999 certificate] evidencing an intent to add Pankow as an additional insured on the OneBeacon policy. The record is silent as to why. . . . Dolgan did not testify, nor did anyone else, about what caused the [1999] certificate of insurance to be issued. The fact that all of the information relating to the OneBeacon policy is correct on the [1999] certificate . . . causes me to infer that this was not a simple clerical error . . . . Further, . . . at the time [the 1999] certificate . . . was prepared, practices were loose at Related and Distinguished; 'anyone' within the Related organization could have called Distinguished . . . and asked for coverage changes . . . ." Indeed, when Roopnarine was asked why Dolgan issued the 1999 certificate, he responded, "There should be a request in the file. . . . Somebody must have requested it." On appeal, OneBeacon has not explained how these findings are not supported by substantial evidence. Thus, for the purpose of our review, we must accept the trial

court's finding that OneBeacon failed to establish by clear and convincing evidence that the 1999 certificate was issued by mistake, rather than based on a written or oral request from Related.[8]

The trial court also found that OneBeacon issued the 1881 form in response to the Roopnarine binder. Roopnarine testified that he issued the Roopnarine binder because he found the 1999 certificate in the file, and that he only later came to believe that the issuance of the binder was a mistake. OneBeacon has not demonstrated on appeal that the trial court's factual findings as to this chain of events are not supported by substantial evidence. Those findings constitute sufficient evidence to support the trial court's ultimate finding that OneBeacon did not establish by clear and convincing evidence that the 1881 form was issued by mistake.

In any event, as codified in Civil Code section 3399, contract reformation requires either a mutual mistake or a mistake known or suspected by the non-mistaken party. This issue does not appear to have been raised even in the trial court, much less on appeal, although it is alluded to in the trial court's statement of decision. Shortly before oral argument, however, OneBeacon submitted a letter citing the authorities discussed in the remainder of this section, *post*, and arguing that "the trial court misconstrued its equitable power of reformation by limiting its application to mutual mistake and not giving effect to the intention of the parties . . . ." [9]

Under the case law, "[r]eformation for *unilateral* mistake is not available unless the mistake of one party was known or suspected by the other party at the time of the execution of the document. [Citation.]" (*Cedars-Sinai Medical Center v. Shewry* (2006)

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[8] OneBeacon takes the position that issuing the 1999 certificate and the Roopnarine binder constituted not only an error but also an act in excess of authority by Distinguished. If so, OneBeacon's remedy, if any, is against Distinguished, not Pankow.

[9] We do not condone the belated submission by letter brief of additional authorities that were readily available to the citing party when it prepared its brief(s) on appeal. (See Cal. Rules of Court, rule 8.200(a)(4).) Nonetheless, as Pankow's counsel did not object, we have exercised our discretion to address OneBeacon's additional authorities, and the issue posed by OneBeacon's pre-argument letter, on the merits.

137 Cal.App.4th 964, 985, italics added; accord, *La Mancha Dev. Corp. v. Sheegog* (1978) 78 Cal.App.3d 9, 16; *Spiegler v. Home Depot U.S.A., Inc.* (C.D.Cal. 2008) 552 F.Supp.2d 1036, 1055.) This is because, where the party seeking reformation made a unilateral mistake, "[i]n the absence of [the other party's] actual knowledge or suspicion [of the mistake], there is no inequitable conduct on which to predicate an estoppel." (*La Mancha Dev. Corp. v. Sheegog*, *supra*, 78 Cal.App.3d at p. 17.)

In its pre-argument letter, OneBeacon cited *Jones v. First American Title Ins. Co.* (2003) 107 Cal.App.4th 381 and *American Home Ins. Co v. The Travelers Indemnity Co.* (1981) 122 Cal.App.3d 951 to support of its argument that the trial court erred in failing to grant reformation. Both of these cases, however, involved *mutual* mistakes by the parties to a contract in crafting contract language that would effectuate their shared intent. At oral argument, counsel for OneBeacon also relied on *Merkle v. Merkle* (1927) 85 Cal.App. 87, which is discussed in *Jones v. First American Title Ins. Co.*, *supra*, 107 Cal.App.4th at pp. 388-389. In *Merkle v. Merkle*, though the mistake was made by one party without the other's knowledge, it was clear that the parties' *mutual* intent would have been defeated if the court had not reformed a deed to correct an erroneous property description, and the court therefore characterized the case as one involving mutual mistake. (85 Cal.App. at pp. 105-108.) Here, however, as already noted, OneBeacon has cited no evidence that Third or Related ever expressed an intention that Pankow should *not* be added as an insured on the OneBeacon policy.

In short, none of these authorities supports the proposition that reformation should be granted based on a party's unilateral mistake. Even if we were to accept OneBeacon's argument that the 1881 form's inclusion of Pankow resulted from a mistake on the part of OneBeacon, this would establish only a unilateral mistake. In the absence of proof that Third or Related knew of or suspected the error—a fact as to which no evidence was introduced at trial—this showing does not entitle OneBeacon to reformation of the OneBeacon polic**y.**

DISPOSITION

The judgment is affirmed. Pankow shall recover its costs on appeal.

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RUVOLO, P. J.

We concur:

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REARDON, J.

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RIVERA, J.